

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	CIVIL NO. CV03-00385 SOM-LEK
	)	(Copyright)
Plaintiff,	)	
vs.	)	<b>DECLARATION OF LEX R. SMITH</b>
	)	
HAWAIIAN EXPRESS SERVICE,	)	
INC., et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

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DECLARATION OF LEX R. SMITH

1. I am an attorney licensed to practice law before all of the State and Federal Courts in the State of Hawaii and am one of the attorneys representing Defendant POST-CONFIRMATION TRUST for Fleming Companies, Inc. ("PCT") in this case.


2. Attached hereto as Exhibit "A" are true copies of pages from the March 2002 deposition of Mark Dillon.

3. Attached hereto as Exhibit "B" are true copies of pages from the trial transcript dated February 28, 2003 containing the testimony of Mr. Ralph Stussi in Mr. Berry's lawsuit against Fleming.

4. Attached hereto as Exhibit "C" is a true and correct copy of the Court's October 21, 2005 Order.

5. Attached hereto as Exhibit "D" are true copies of pages from the trial transcript in the instant action dated March 1, 2006 and reflecting trial testimony of Mr. Brian Christensen.

DATED: Honolulu, Hawaii, May 17, 2006.

A handwritten signature in black ink, appearing to read "Lex R. Smith", written over a horizontal line.

LEX R. SMITH